Pemungut Duti Setem v BASF Services (Malaysia) Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO C-01–48 OF 2001
LOW HOP BING, ZAINUN ALI AND ABDUL MALIK ISHAK JJCA
12 AUGUST 2009

Revenue Law — Stamp duty — Assessment — Appeal by collector of stamp duty against decision of High Court which held that assessment of stamp duty should exclude infrastructure fee — Whether infrastructure fee was part and parcel of consideration in transfer instrument and so attracted stamp duty — Whether stamp duty imposed on instrument and not on transaction — Stamp Duty Act 1949 s 12A, First Schedule item 32(a)

Statutory Interpretation — Construction of statutes — Rules of construction — Whether clear words in taxing statute must be construed according to intention expressed in Act itself — Stamp Duty Act 1949 s 12A, First Schedule item 32(a)

Pursuant to a purchase, sale, development and infrastructure agreement dated 11 October 1997 ('the agreement'), the respondent/purchaser purchased property from the Perbadanan Kemajuan Negeri Pahang ('the vendor'). Under the agreement the vendor agreed to sell the property at the purchase price of RM84,593,372; to develop the property in accordance with the specifications at a fee ('the development fee'); and to provide the infrastructure as indicated in the agreement at a fee ('the infrastructure fee'). The schedule for the payment of the purchase price, the development fee and the infrastructure fee was provided in cll 2(2) and 2(3) of the agreement. The vendor forwarded the transfer instrument in Form 14A to the collector of stamp duty for the purposes of stamp duty adjudication. By notice of assessment dated 30 December 1999, the collector of stamp duty ('the collector') assessed the stamp duty to be payable at RM6,799,804 after taking into account the total consideration of the property at RM170,645,250 which was the aggregate sum of the three components, namely, the purchase price, the development fee and the infrastructure fee. Aggrieved by the notice of assessment by the collector, the respondent appealed to the High Court by way of case stated. The High Court allowed the respondent's appeal and held that the assessment of the stamp duty should only be based on two components, ie the purchase price and the development fee, and that the third component, ie the infrastructure fee should be excluded. This was the collector's appeal against that decision. The collector submitted that the High

A Court had erred in law and in fact in holding that the stamp duty could not be imposed on the infrastructure fee because stamp duty is imposed on the instrument and not the transaction. The respondent, on the other hand submitted that the consideration for the transfer of the property did not include the infrastructure fee which was independent of the other two
B components and therefore could not form part of the consideration. The sole issue for determination in this appeal was whether the infrastructure fee was part and parcel of the consideration in the transfer instrument and so attracted stamp duty.

C

Held, allowing the appeal with costs:

(1) (per **Low Hop Bing JCA**) The consideration in the instant appeal was
D RM170,645,250 which was the total of the three components, namely the purchase price, the development fee and the infrastructure fee. The conjunctive treatment of the three components was confirmed in cl 2(1) which provided that 'the purchase price, the development fee and the infrastructure fee shall jointly be referred to as the price'. This express
E provision in the agreement plainly placed the three components conjunctively and not disjunctively. Further, the payment and the refund, if any, expressly contained in cll 2(2) and 2(3) of the agreement were to be construed conjunctively and not disjunctively. They were to be read as a whole and not as separate and distinct payments. The High
F Court judge had therefore erred in excluding the infrastructure fee from the other two components which constituted the consideration for the property (see paras 18, 19, 20 & 21).

(2) (per **Abdul Malik Ishak JCA**) In construing the Stamp Duty Act 1949
G ('the Act') one must look at the instruments and not at the transactions. This is because under the Act stamp duty is imposed on an instrument and not on a transaction. Thus, in the present case the instrument would refer to the agreement which is chargeable with stamp duty under item 32(a) of the First Schedule to the Act and the date for
H determining the market value of the property being transferred according to s 12A(b) of the Act would be the date of execution of the agreement, which was on 11 October 1997 and which would include all the three components, namely the purchase price, the development fee and the infrastructure fee (see para 39).

I (3) (per **Abdul Malik Ishak JCA**) The Act and the First Schedule thereto must be construed according to the intention expressed in the Act itself. Thus the clear words that appear in s 12A(b) of the Act and item 32(a) of the First Schedule to the Act have to be given effect as expressed in the Act (see paras 40 & 41).

[Bahasa Malaysia summary

Menurut satu perjanjian belian, jualan, pembangunan dan infrastruktur bertarikh 11 Oktober 1997 ('perjanjian'), responden/pembeli membeli harta daripada Perbadanan Kemajuan Negeri Pahang ('penjual'). Di bawah perjanjian tersebut penjual bersetuju untuk menjual hartanah pada harga belian RM84,593,372; untuk membangunkan harta mengikut spesifikasi pada bayaran tersebut ('bayaran pembangunan); dan untuk menyediakan infrastruktur seperti yang dinyatakan dalam perjanjian pada bayaran tersebut ('bayaran infrastruktur'). Jadual untuk bayaran harga belian, bayaran pembangunan dan infrastruktur disediakan dalam klausa-klausa 2(2) dan 2(3) perjanjian. Penjual menghantar surat cara pemindahan dalam Borang 14A kepada pemungut duti setem bagi tujuan adjudikasi duti setem. Melalui notis taksiran bertarikh 30 Disember 1999, pemungut duti setem ('pemungut') mentaksir duti setem untuk dibayar pada RM6,799,804 selepas mengambilkira balasan harta pada RM170,645,250, yang merupakan jumlah agregat ketiga-tiga komponen, iaitu, bayaran belian, bayaran pembangunan dan infrastruktur. Terkilan dengan notis taksiran oleh pemungut, responden merayu ke Mahkamah Tinggi. Mahkamah Tinggi membenarkan rayuan responden dan memutuskan bahawa taksiran duti setem hanya berdasarkan dua komponen, iaitu harga belian dan bayaran pembangunan, dan bahawa komponen ketiga, iaitu bayaran infrastruktur perlu dikecualikan. Ini merupakan rayuan pemungut terhadap keputusan tersebut. Pemungut menghujah bahawa Mahkamah Tinggi telah khilaf dalam undang-undang dan dalam fakta dalam memutuskan bahawa duti setem tidak boleh dikenakan ke atas bayaran infrastruktur kerana duti setem dikenakan ke atas surat cara dan bukannya transaksi. Responden, kemudiannya menghujah bahawa balasan untuk pemindahan harta tidak termasuk bayaran infrastruktur yang bebas daripada dua komponen lain dan oleh itu tidak termasuk sebahagian daripada balasan. Isu utama yang perlu ditentukan oleh rayuan ialah sama ada bayaran infrastruktur sebahagian balasan dalam surat cara pemindahan dan duti setem.

Diputuskan, membenarkan rayuan dengan kos:

(1) (oleh **Low Hop Bing HMR**) Balasan dalam rayuan ini ialah RM170,645,250 yang merupakan jumlah ketiga-tiga komponen, iaitu bayaran belian, bayaran pembangunan dan infrastruktur. Proses yang menghubungkan ketiga-tiga komponen disahkan dalam klausa 2(1) yang menyatakan bahawa 'harga belian, bayaran pembangunan dan infrastruktur bersama-sama dirujuk sebagai harga'. Peruntukan yang tersurat dalam perjanjian secara jelas meletakkan ketiga-tiga komponen secara berhubungan dan bukannya berasingan. Lebih-lebih lagi,

bayaran dan bayaran balik, sekiranya ada, secara tersurat terkandung dalam klausa-klausa 2(2) dan 2(3) perjanjian perlu ditafsirkan secara berhubungan dan bukannya berasingan. Ia perlu dibaca secara keseluruhan dan bukannya sebagai bayaran yang berasingan dan berlainan. Hakim Mahkamah Tinggi oleh itu telah khilaf dalam mengecualikan balasan untuk harta (lihat perenggan 18, 19, 20 & 21).

(2) (oleh **Abdul Malik Ishak HMR**) Dalam mentafsirkan Akta Duti Setem 1949 ('Akta') surat cara yang perlu dipertimbangkan dan bukannya transaksi. Ini kerana di bawah Akta duti setem dikenakan ke atas surat cara dan bukannya ke atas transaksi. Oleh itu dalam kes ini surat cara merujuk kepada perjanjian yang boleh dikenakan duti setem di bawah item 32(a) Jadual Pertama Akta dan tarikh untuk menentukan nilai pasaran harta yang dipindahkan mengikut s 12A(b) Akta akan menjadi tarikh penyempurnaan perjanjian, iaitu pada 11 Oktober 1997 dan termasuk ketiga-tiga komponen, iaitu harga belian, bayaran pembangunan dan infrastruktur (lihat perenggan 39).

(3) (oleh **Abdul Malik Ishak HMR**) Akta dan Jadual Pertama perlu ditafsirkan mengikut tujuan yang tersurat di dalam Akta itu sendiri. Oleh itu perkataan yang jelas dinyatakan dalam s 12A(b) Akta dan item 32(a) Jadual Pertama Akta perlu diberikan kesan sepertimana yang dinyatakan dalam Akta (lihat perenggan 40 & 41).]

Notes

For cases on assessment, see 10 *Mallal's Digest* (4th Ed, 2008 Reissue) paras 2523–2526.

For cases on rules of construction, see 11 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2013–2031.

Cases referred to

Aron Salomon (Pauper) v A Salomon & Co Ltd [1897] AC 22, HL (refd)

Attorney General v Sillem & Ors (1863) 2 H & C 431 (refd)

Attorney General v Noyes & Ors (1881) 8 QBD 125, CA (refd)

Cape Brandy Syndicate v Inland Revenue Commissioners [1921] 1 KBD 64 (refd)

Capper & Anor v Baldwin [1965] 2 QB 53 (refd)

Corocraft Ltd & Anor v Pan American Airways Inc [1969] 1 QB 616, CA (refd)

David M'Cowan v Baine and Johnston & Ors, The 'Niobe' [1891] AC 401, HL (refd)

Glenrothes Development Corp v Inland Revenue Commissioners [1994] STC 74 (refd)

Hornsey Local Board v Monarch Investment Building Society (1890) 24 QBD 1, CA (refd)

Inland Revenue Commissioners v Collco Dealings Ltd [1959] 1 WLR 995, Ch D (refd)
Inland Revenue Commissioners v Ross & Coulter & Ors (Bladnoch Distillery Co Ltd) [1948] 1 All ER 616; [1948] SC 1; HL (refd)
Limmer Asphalte Paving Co Ltd v Commissioners of Inland Revenue (1872) LR 7 Exch 211 (refd)
Lim Teck Lee v The Commissioner of Stamps [1956] MLJ 135, CA (refd)
Partington v A-G [1869] LR 4 HL 100 (refd)
Prudential Assurance Co v Inland Revenue Commissioners [1934] All ER Rep 515; [1935] 1 KB 101, HC (refd)
Prudential Assurance Co v Inland Revenue Commissioners [1993] 1 WLR 211, Ch D (refd)
Shea v Reid-Newfoundland Co [1908] AC 520, PC (refd)
Sutters v Briggs [1922] 1 AC 1, HL (refd)
Warburton v Loveland d Ivie & Ors [1824–1834] All ER Rep 589, HL (refd)

Legislation referred to
Finance Act 1963 [UK] s 55(1)
Stamp Act 1949 s 12A(b), First Schedule item 32(a), Form 14A

Appeal from: Originating Motion No 25–2 of 2000 (High Court, Kuantan)

Norhisham Ahmad (Legal Officer, Inland Revenue Board) for the appellant.
K Anantham (Wong Chee Lin with him) (Skrine & Co) for the respondent.

Low Hop Bing JCA:

APPEAL

[1] The appellant, the collector of stamp duties ('the collector'), has vide notice of assessment dated 30 December 1999 assessed stamp duty in the sum RM6,799,804 ('the assessment') after taking into account the sum of RM170,645,250 as consideration for the property held under HS (D) 20021 PT No 80300, Mukim of Sungai Kerang, district of Kuantan, Pahang ('the property') which consists of three components viz the purchase price, the development fee and the infrastructure fee (collectively, 'the three components').

[2] The respondent ('the purchaser') has, by way of case stated in the High Court, appealed against the collector's assessment.

[3] The High Court has allowed the purchaser's appeal and set aside the collector's assessment.

[4] This is the appeal by the collector against the decision of the High Court.

FACTUAL BACKGROUND

[5] The purchaser had purchased the property from Perbadanan Kemajuan Negeri Pahang (PKNP) ('the vendor') pursuant to an agreement known as the purchase, sale, development and infrastructure agreement dated 11 October 1997 ('the agreement'). (A reference hereinafter to a clause is a reference to that clause in the agreement)

[6] Pursuant to the agreement, the vendor agreed, inter alia:

(a) to sell the property to the purchaser at the purchase price of RM84,593,372;

(b) to develop the property in accordance with the specifications, as defined in the agreement, at a fee of RM24,794,609 (the development fee); and

(c) to provide the infrastructure, as indicated in the agreement, at a fee of RM61,257,269 (the infrastructure fee).

[7] The agreement provides, inter alia, as follows:

(1) the agreement is conditional only upon the approval of the Foreign Investment Committee (FIC): cl 17;

(2) the schedule for payment of the purchase price and the development fee is set out in cl 2(2), and the payment for the infrastructure fee is contained in cl 2(3); and

(3) after the signing of the agreement, the vendor shall procure the issuance of a separate document of title by the relevant authorities; deliver a valid and registrable transfer instrument in Form 14A for the purposes of stamp duty adjudication; and, after the stamp duty has been duly paid by the purchaser, to transfer the property in favour of the purchaser. Upon completion of the registration of the transfer in favour of the purchaser, the vendor's solicitors shall deliver the document of title to the purchaser's solicitors who shall only release the same to the purchaser upon full payment of the purchase price and the development fee by the purchaser according to the terms of the agreement: cl 16.

[8] Pursuant to the provisions of the Stamp Act 1949, the transfer instrument in Form 14A was forwarded to the collector for adjudication of stamp duty. The consideration for the property stated in the transfer is merely the first component ie purchase price of RM84,593,372 only. (A reference

hereinafter to a section or a schedule is a reference to that section in or that schedule to the Stamp Act 1949, unless otherwise stated).

[9] By notice of assessment, dated 30 December 1999, the collector assessed the stamp duty at RM6,799,804, after taking into account the total consideration for the property at RM170,645,250 which is the aggregate sum of the three components.

[10] The collector's assessment was set aside by the learned judge who held that the assessment of the stamp duty should be based on two components only viz the purchase price and the development fee, while the third component ie the infrastructure fee should be excluded.

[11] The collector, being dissatisfied with the exclusion of the infrastructure fee in the assessment of the stamp duty, has now preferred this appeal.

DOES CONSIDERATION INCLUDE INFRASTRUCTURE FEE?

[12] The collector's learned legal officer Mr Norhisham bin Ahmad submitted that the High Court had erred in law and in fact in holding that the stamp duty cannot be imposed on the infrastructure fee, and stamp duty is imposed on the instrument and not the transaction, referring to:

(1) *Lim Teck Lee v The Commissioner of Stamps* [1956] MLJ 135 (CA) Singapore;

(2) *Limmer Asphalte Paving Co Ltd v Commissioners of Inland Revenue* (1872) LR 7 Exch 211; and

(3) *Prudential Assurance Co v Inland Revenue Commissioners* [1934] All ER Rep 515; [1935] 1 KB 101 (HC).

[13] Purchaser's learned counsel Mr K Ananthan, assisted by Ms Wong Chee Lin, responded that the consideration for the transfer of the property does not include infrastructure fee which is independent of the other two components, and cannot form part of the said consideration relying, inter alia, on *Prudential Assurance Co v Inland Revenue Commissioners* [1993] 1 WLR 211 (HC).

[14] In the instant appeal, we identify the sole question for determination as follows:

> Given the aforesaid factual background, upon the true construction of the relevant clauses of the agreement and in the light of the relevant provisions of the Stamp Act 1949, is the infrastructure fee part and parcel of the consideration in the transfer instrument and so attracts stamp duty?

[15] In our view, a good starting point is to set out the fundamental principles governing stamp duties for the conveyance of properties. These principles may be distilled as follows:

(1) Conveyance of a property is an instrument chargeable with stamp duty under item 32(a) of the First Schedule;

(2) Where an instrument is chargeable with stamp duty under item 32(a) of the First Schedule, the date for determining the market value of any property being transferred shall be, in the case of a transfer implementing a sale under a duly stamped agreement of sale and purchase, the date of execution of that agreement: s 12A(b);

(3) Stamp duty under the Stamp Act 1949, is imposed on an instrument and not on a transaction. *Lim Teck Lee*; and *Prudential Assurance Co* [1934] All ER Rep 515; [1935] 1 KB 101 (HC);

(4) The parties' description of the instrument is immaterial, as the real and true meaning thereof is to be ascertained; and

(5) The instrument should be stamped for its leading and principal object, and the stamp duty covers everything accessory to this object: *Asphalte Paving Co Ltd*.

Lim Teck Lee, provides a useful illustration of the above principles. There, the partners were the registered proprietors of a trademark. On the retirement of one partner, the remaining partners applied for registration of the trademark in their name. In support thereof, they produced an instrument which where relevant reads:

> I, Siow Eng Hwa, acknowledge receipt of $185,000 in full satisfaction of my share in the capital assets and goodwill of the partnership … and cease to be a partner in the firm with effect from 31 December 1951 and that the continuing partners are solely entitled to the assets … including the benefits of all trademarks and goodwill.

[16] The instrument was stamped as a receipt with six cents, but the commissioner of duties stamp adjudged it to be chargeable with ad valorem duty. That adjudication was affirmed by the Singapore High Court, and Court of Appeal which held that the instrument was not a mere receipt but

was in effect a transfer of the retiring partner's share in the partnership assets for $185,000, and therefore a conveyance for sale, chargeable with ad valorem duty.

[17] In the instant appeal, the agreement was executed on 11 October 1997. The consideration is RM170,645,250 which is the total of the three components. It therefore attracts the application of item 32(a) of the First Schedule and s 12A(b).

[18] Clause 1 specifically stipulates that the deposit was paid as a sum 'towards the purchase price, the development fee and the infrastructure fee'. The deposit is the initial consideration for three components. It constitutes the first step in the performance of the agreement. It is the payment for the three components collectively, and not for one component only.

[19] The conjunctive treatment of the three components is confirmed in cl 2(1) which provides that the 'the purchase price, the development fee and the infrastructure fee shall jointly be referred to as the price'. This express provision in the agreement plainly places the three components conjunctively and not disjunctively.

[20] Although cl 2(2) sets out the manner of paying the 'purchase price plus the development fee', while cl 2(3) provides for the progress payment of the 'infrastructure fee', cl 2(5) also treats the three components conjunctively. Clause 2(5) expressly prescribes that 'The monies paid pursuant to cl 2(2) and cl 2(3) hereof shall be refunded if the agreement lapses or is terminated'. The payment and the refund, if any, expressly contained in cl 2(2) and (3) are again to be construed conjunctively and not disjunctively. They are to be read as a whole and not as separate and distinct payments. The learned judge has therefore erred in excluding the infrastructure fee from the other two components which constitute the consideration for the property.

CONCLUSION

[21] On the foregoing grounds, our answer to the above question is in the affirmative. The collector's appeal is allowed with costs here and below. The decision of the High Court is set aside. The collector's assessment is affirmed. Deposit to be refunded to the collector.

[22] My learned brother Abdul Malik Ishak JCA has also prepared his judgment in support of mine.

Abdul Malik Ishak JCA:

[23] This appeal brings into sharp focus the rigours of s 12A(b) of the Stamp Act 1949 (Act 378) and item 32(a) of the First Schedule to the Stamp Act 1949 (Act 378) to the forefront.

[24] Section 12A(b) of the Stamp Act 1949 (Act 378) enacts as follows that:

> 12A Assessment of the value of property under transfer or settlement.
>
> Where an instrument is chargeable with duty under item 32(a) of the First Schedule, the date for determining the market value of any property being transferred, settled or gifted shall be:
>
> (b) in the case of a transfer implementing a sale under a duly stamped agreement of sale and purchase, the date of execution, of that agreement; or

[25] While item 32(a) of the First Schedule to the Stamp Act 1949 (Act 378) states as follows:

Item	Description of Instrument	Proper Stamp Duty
32	CONVEYANCE, ASSIGNMENT, TRANSFER OR ABSOLUTE BILL OF SALE	
	(a) On sale of any property (except stock, shares, marketable securities and accounts receivables or book debts of the kind mentioned in paragraph (c))	For every RM100 or fractional part of RM100 of the amount of the money value of the consideration or the market value of the property, whichever is the greater —
.	.	(i) RM1.00 on the first RM100,000;
.	.	(ii) RM2.00 on any amount in excess of RM100,000 but not exceeding RM500,000;

.	.	(iii) RM3.00 on any amount in excess of RM500,000.

[26] The facts are fairly simple and they have been set out in extenso by my learned brother Low Hop Bing JCA. It concerns the notice of assessment dated 30 December 1999 by the collector of stamp duties who assessed the stamp duty to be payable at RM6,799,804 after taking into account the total consideration of the property at RM170,645,250 which forms the aggregate of three components, namely, the purchase price, the development fee and the infrastructure fee.

[27] Aggrieved by the notice of assessment by the collector of stamp duties, the respondent purchaser appealed to the High Court by way of a case stated. The High Court allowed the respondent purchaser's appeal and held that the assessment of the stamp duty should exclude the infrastructure fee. The collector of stamp duties now appeals to this court against the decision of the High Court.

[28] The respondent purchaser purchased the property from *Perbadanan Kemajuan Negeri Pahang* and the agreement between the parties can be seen at pp 21–80 of the appeal record vol 1 and they are described as the '*purchase, sale, development and infrastructure agreement*'. All the three components are mentioned in the agreement and not separately.

[29] We have to look at s 12A(b) of the Stamp Act 1949 (Act 378) and item 32(a) of the First Schedule to the said Act. Rowlatt J, in *Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 1 KBD 64, at p 71 rightly said:

> It simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

[30] Indeed when we look at the above stated provisions of the Stamp Act 1949 (Act 378) and the First Schedule thereto, there is no room to manoeuvre in favour of the respondent purchaser. Even the title to the agreement makes reference to all the three components.

[31] Taylor J, writing a separate judgment for the Court of Appeal in *Lim Teck Lee v The Commissioner of Stamps* [1956] MLJ 135, at p 137, aptly said:

A The fundamental principle is this. The Stamp Act taxes instrument, not transactions. If there are two ways of carrying out a transaction and the parties are content with the simpler, they are entitled to carry it out in that way.

B **[32]** Way back in 1934, Finlay J, in *Prudential Assurance Co v Inland Revenue Commissioners* [1934] All ER 515 at pp 516–517 had this to say and it must surely apply to the present appeal at hand:

C I think the case is not entirely free from difficulty, but I think that it depends upon a rigorous adherence to what must never be forgotten, namely, that under the Stamp Act one stamps instruments, not transactions or anything of that sort. What one has to do is to look at the particular instrument which is brought in for stamping and arrive at a conclusion as to what it is.

D **[33]** Going further backwards to the year 1872, Martin B, in *Limmer Asphalte Paving Co Ltd v Commissioners of Inland Revenue* (1872) LR 7 Exch 211, at pp 214–215, had occasion to say that:

E In order to determine whether any, and if any what, stamp duty is chargeable upon an instrument, the legal rule is that the real and true meaning of the instrument is to be ascertained; that the description of it given in the instrument itself by the parties is immaterial, even although they may have believed that its effect and operation was to create a security mentioned in the Stamp Act, and they so declare.

F **[34]** Martin B, continued further to say in the same case at p 217 to the following effect:

G There is no better established rule as regards stamp duty than that all that is required is, that the instrument should be stamped for its leading and principal object, and that this stamp covers everything accessory to this object.

[35] The First Division of the Inner House of the Court of Session as the Court of Exchequer in Scotland with a coram of the Lord President (Hope), Lord Morison and Lord Mayfield in the case of *Glenrothes Development Corp* H *v Inland Revenue Commissioners* [1994] STC 74 should be referred to. There, *Glenrothes* required the commissioners to assess the amount of stamp duty payable and in particular to determine whether '*the amount or value of the consideration for the sale*' for the purposes of s 55(1) of the Finance Act 1963 included the amount of VAT. The commissioners took the view that it did I and assessed stamp duty on the total amount paid. *Glenrothes* appealed. The court held, inter alia, that the VAT element formed part of the consideration for the sale as that expression was ordinarily understood. Consequently, *Glenrothes*' appeal was refused. The Lord President (Hope) writing a separate judgment had this to say at p 80 of the report:

It is also well settled that if the meaning of a provision in a taxing act is clear the court has no jurisdiction to alter its meaning in order to avoid what might be thought to be a harsh result (see *Inland Revenue Commission v Ross and Coulter & Ors (Bladnoch Distillery Co Ltd)* [1948] 1 All ER 616 at p 625; 1948 SC 1 at p 10 per Lord Thankerton). But if there is an ambiguity, because the phrase in question is capable of two or more alternative meanings, the ambiguity will be resolved in favour of the taxpayer without regard to the question whether it was appropriate for a tax to be imposed on a tax. As Rowlatt J said, in the well known passage in his opinion in *Cape Brandy Syndicate v IRC* [1921] 1 KBD 64 at p 71; 12 TC 358 at p 366, in matters of taxation you have to look simply at what is clearly said in the taxing act, as there is no room for any intendment and there is no equity about a tax.

[36] Lord Morison, writing a separate judgment, in *Glenrothes* applied the opinion of Rowlatt J, in *Cape Brandy Syndicate v Inland Revenue Commissioners* as reproduced earlier and then said at p 81 of the report:

Similarly, in *Partington v A–G* [1869] LR 4 HL 100 at p 122 Lord Cairns stated:

> If there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute.

[37] Also writing a separate judgment, Lord Mayfield vigorously applied the speeches of Rowlatt J in the *Cape Brandy Syndicate v Inland Revenue Commissioners*, of Lord Cairns in *Partington v A-G* [1869] LR 4 HL 100 at p 122, and of Lord Thankerton in *Inland Revenue Commission v Ross and Coulter & Ors (Bladnoch Distillery Co Ltd)* [1948] 1 All ER 616 at p 625; [1948] SC 1 at p 10 as reproduced earlier.

[38] Suffice for me to say that in construing the Stamp Act 1949 (Act 378) one must look at the instruments and not at the transactions. The reason is quite simple. Under the Stamp Act 1949 (Act 378), stamp duty is imposed on an instrument and not on a transaction. Thus, the instrument here would refer to the '*Purchase, Sale, Development and Infrastructure Agreement*' which is chargeable with stamp duty under item 32(a) of the First Schedule to the Stamp Act 1949 (Act 378) and the date for determining the market value of the property being transferred according to s 12A(b) of the Stamp Act 1949 (Act 378) shall be the date of execution of the said agreement which was on 11 October 1997 and which would include all the three components.

[39] The Stamp Act 1949 (Act 378) and the First Schedule thereto must be construed according to the intention expressed in the Act itself. It must be borne in mind that the function of the court is to interpret an Act 'according to the intent of them that made it and the intention must be deduced from

the language used' (per Lord Parker CJ in *Capper & Anor v Baldwin* [1965] 2 QB 53 at p 61). In the same vein, Donaldson J, in *Corocraft Ltd & Anor v Pan American Airways Inc* [1969] 1 QB 616 at p 638 aptly said that, 'The duty of the courts is to ascertain and give effect to the will of Parliament as expressed in its enactments'. Of significance is the following phrase. That, 'Where the language of the Act is clear and explicit, we must give effect to it whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature' (*Warburton v Loveland d Ivie & Ors* [1824–1834] All ER Rep 589 (HL) at p 591; *Attorney General v Sillem & Ors* (1863) 159 ER 178, 2 H & C 431 at p 510; *Attorney General v Noyes & Ors* (1881) 8 QBD 125, at p 139 (CA); *Hornsey Local Board v Monarch Investment Building Society* [1889] 24 QBD 1 (CA); *David M'Cowan v Baine and Johnston & Ors, The 'Niobe'* [1891] AC 401 at p 409 (HL); *Aron Salomon (Pauper) v A Salomon & Co Ltd* [1897] AC 22 at p 38 (HL); *Sutters v Briggs* [1922] 1 AC 1 at p 8 (HL); and *Inland Revenue Commissioners v Collco Dealings, Ltd* [1959] 1 WLR 995).

[40] I have to give effect to the clear words that appear in s 12A(b) of the Stamp Act 1949 (Act 378) and item 32(a) of the First Schedule to the said Act bearing in mind the sage words of Lord Robertson in *Shea v Reid-Newfoundland Co* [1908] AC 520 at p 525 that meticulous criticism must not be allowed to wreck an enactment.

[41] My learned brother Low Hop Bing JCA has meticulously set out the relevant clauses in the 'Purchase, Sale, Development And Infrastructure Agreement' germane to the appeal at hand and I will not dwell on them except to say that those clauses cannot be construed in favour of the respondent purchaser.

[42] I agree to make those orders as made by my learned brother Low Hop Bing JCA.

Appeal allowed with costs.

Reported by Kohila Nesan